

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1924 of 1992

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

DIRECTOR OF HIGHER EDUCATION

Versus

SUNITA J MEHTA

Appearance:

Mrs. Manisha Lavkumar AGP for Petitioner
MS VASUBEN P SHAH for Respondent No. 1
MR KS JHAVERI for Respondent No. 2
NOTICE SERVED for Respondent No. 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 22/09/2000

ORAL JUDGEMENT

1. The petition has been preferred by the Director of Higher Education, as one of parties before the Gujarat

Affiliated Colleges Service Tribunal, against the judgment/order dated 25-7-1991 passed by the Tribunal, by which it was directed that respondent No.1 Sunita Jitendrakumar Mehta, who was serving as Part-time Lecturer in Politics with respondent No.2 in H.K. Arts College, Ahmedabad, affiliated to Gujarat University (respondent no. 3) be granted full time appointment as Lecturer in view of her long service from the year 1976 in terms of the provisions contained in Ordinance 165 of the Gujarat University.

2. Learned A.G.P. Mrs. Manisha Lavkumar appearing for the petitioner - Director of Higher Education contends that respondent No.1 was only working as Part-time Lecturer in the vacancy of post reserved for the Scheduled Tribe Candidate. For regular appointment the post was advertised for being filled by candidates from the category of Scheduled Tribes. The procedure of appointment adopted was strictly in accordance with the reservation roster to be maintained by the Affiliated College. Reliance is placed on a decision of learned Single Judge of this Court in Special Civil Application No. 8241 of 1990 decided on 9-5-1997 in support of the submission that regular appointment made in accordance with the roster system cannot be assailed.

3. I have heard the learned counsel appearing for the petitioner as also the learned counsel appearing for respondent No.1, (the lecturer) and the learned counsel appearing for the Management and the College.

4. On going through the judgment of the Tribunal I find that the learned Member of the Tribunal has given effect to the provisions contained in Ordinance 165 applicable to Affiliated Colleges of the University. The relevant part of the Ordinance 165 has been quoted in the judgment of the Tribunal which provides the priority in the matter of giving preference for appointments. It is clear that in the absence of any roster for reservation maintained for Scheduled Castes and Scheduled Tribes and availability of any candidate of reserved category in the surplus pool, the preference for appointment could be given to the petitioner being a working Part-time Lecturer. It is not in dispute that respondent no. 1 continues in service on the post of Lecturer since 1976 and her appointment has now been approved by the University after the decision of the Tribunal. Learned Counsel for respondent No.1 informs that since the order of the Tribunal was not implemented, a contempt petition was filed and consequent thereupon a regular appointment has been given to respondent No.1, which has been duly

approved by the Department for releasing grant-in-aid for payment of her salary.

5. The judgment and order of the Tribunal has not been challenged by the Management of the College and the respondent no. 1 is still working. The challenge to the order of the Tribunal has been made by the Director of Higher Education on the ground that the post on which respondent no. 1 had been directed to be appointed should have been filled by a candidate from the reserved category in accordance with the roster system. As has been held by the Tribunal, Ordinance 165 applicable to Affiliated Colleges was binding. Merely because the management failed to adhere to the reservation roster, the provisions of the Ordinance and the priorities fixed for appointment therein, could not have been disregarded.

6. The relief granted by the Tribunal being in accordance with the University Ordinance cannot be allowed to be reversed at the instance of Director of Higher Education. The petitioner as a Part-time Lecturer has put in a long period of service and disturbing her appointment at this stage would render her not only jobless but disqualified for any other service due to over age. For all the above reasons, I find no ground to grant any relief in this petition in favour of the Director of Higher Education. Consequently, the petition fails and is hereby dismissed but in the circumstances with no order as to costs. Rule is discharged.

(D. M. DHARMADHIKARI, C.J.)

[sndevu]